No. 80-193

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

HENRY BUCZYNSKI, ALEX BORUSOVIC and OTHER RETIREES SIMILARLY SITUATED,

Petitioners,

vs.

THE GENERAL MOTORS CORPORATION,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

APPENDIX TO BRIEF OF RESPONDENT

LAURENCE REICH,
744 Broad Street,
Newark, New Jersey 07102,
(201) 622-7711

Counsel for Respondent.

CARPENTER, BENNETT & MORRISSEY,
Attorneys for Respondent.

OTIS M. SMITH,
General Counsel,
EUGENE L. HARTWIG,
Associate General Counsel,
DAVID M. DAVIS,
General Motors Corporation,
3044 West Grand Boulevard,
Detroit, Michigan 48202,
Of Counsel.

TABLE OF CONTENTS

PAGE

A—Opinion of the U. S. Court of Appeals for the Ninth Circuit in Standard Oil Company of California v. Agsalud, 317 BNA Pens. Rep. D-1 (9th Cir. Oct, 15, 1980) 1a

B—Memorandum Opinion of the United States District Court for the Eastern District of Michigan in Dotson v. Saginaw Parts, Chevrolet Motor Division, General Motors Corporation, No. 79-73728 (E.D. Mich. Dec. 11, 1980) 10a

Judgment 18a

C—Opinion of the United States District Court for the Eastern District of Michigan in Pavlovic v. Chrysler Corporation, No. 7-70438 (E.D. Mich. Jan. 10, 1978) 19a

D—Memorandum Opinion of the United States District Court for the Eastern District of Michigan in Carlson v. Bundy Corporation, No. 6-72274 (E.D. Mich. Aug. 18, 1977) 25a

APPENDIX A

Opinion of the U. S. Court of Appeals for the Ninth Circuit in *Standard Oil Company of California* v. *Agsalud*, 317 BNA Pens. Rep. D-1 (9th Cir. Oct. 15, 1980)

STANDARD OIL COMPANY OF CALIFORNIA,

Plaintiff-Appellee,

No. 78-1095

October 15, 1980

v.

JOSHUA C. AGSALUD, *et al.*,

Defendants-Appellants.

Appearances:

Noble K. Gregory
Parker A. Maddux
Michael A. Salinsky
Pillsbury, Madison & Sutro
225 Bush Street
San Francisco, Ca. 94120
Attorneys for Plaintiff-Appellee

Ronald Y. Amemiya
Attorney General
Mario R. Ramil
Deputy Attorney General

Appendix A

Carol K. Yamamoto
Deputy Attorney General
Edward H. Nakamura
Special Deputy Attorney General
State of Hawaii
825 Mililani Street, Room 301
Honolulu, Ha. 98613
Attorneys for Defendants-Appellants

Anderson, Schroeder and Farris,
Circuit Judges.

Text:

The questions in this appeal concern whether Hawaii's comprehensive Prepaid Health Care Act, Haw. Rev. Stat. ch. 393, is preempted by the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001-1381 (ERISA). Appellants are officials of the State of Hawaii charged with the responsibility of enforcement of the Hawaii Act under state law. They challenge on statutory and constitutional grounds the district court's decision that ERISA preempts the Hawaii Act. The district court's exhaustive opinion by Judge Renfrew is reported at 442 F.Supp. 695 (N.D.Cal. 1977). We are in basic agreement with that decision and affirm.

ERISA regulates the administration of private employee benefits and pension plans and establishes standards relating to the administration of these plans, particularly with respect to disclosure, reporting, vesting of benefits, funding and the conduct of plan managers. The Hawaii Prepaid Health Care Act requires employers in that state to

provide their employees with a comprehensive prepaid health care plan. The Act was initially adopted in 1974, shortly after ERISA was enacted, and apparently no other state has adopted similar legislation.

The appellee, Standard Oil Company of California, a substantial employer in Hawaii, provides its employees with a self-funded health care plan, governed by ERISA, which does not comply in all respects with the Hawaii Act. When appellants attempted to enforce the Hawaii Act against it, Standard Oil filed this action seeking declaratory and injunctive relief.

Section 3 of ERISA, 29 U.S.C. § 1002, defines "employee welfare benefit plan" broadly as any plan or program maintained by an employer or employee organization to provide medical, surgical or hospital care or benefits. ERISA § 514 (a), 29 U.S.C. § 1144(a), provides that ERISA supersedes or preempts all state laws which "relate to any employee benefit plan."[1] The district court held that ERISA preempts the Hawaii law, that the Hawaii law does not fit into any exemptions from ERISA coverage, and that preemption is constitutional.

The appellants (Hawaii) argue that the benefit plans which the Hawaii Act is designed to require are not employee benefit plans within the meaning of §3 of ERISA. This Court has already held that ERISA preempts state regulation of medical, surgical and hospital benefits and has rejected the contention that regulation of such benefits is a "law which regulates insurance" within the meaning of §514(b)(2)(A) of ERISA, 29 U.S.C. §1144(b)(2)(A).

---

[1] ERISA § 3, 29 U.S.C. § 1002, defines "employee benefit plan" in pertinent part as an "employee welfare benefit plan."

Hewlett-Packard Co. v. *Barnes,* 571 F.2d 502 (9th Cir.), cert. denied, 439 U.S. 831, 99 S.Ct. 108, 58 L. Ed. 2d 125 (1978), aff'g, 425 F.Supp. 1294, 1300 (N.D. Cal. 1977). See also *St. Paul Electrical Workers Welfare Fund* v. *Markman,* 490 F.Supp. 931 (D.Minn. 1980) (Minnesota's Comprehensive Health Insurance Act preempted by ERISA). Hawaii nevertheless argues that because its statute requires employers to provide benefits, the benefit plans are outside the scope of ERISA's coverage.

At the time ERISA was enacted, all private plans were voluntary as opposed to mandated by state law and ERISA itself does not require employers to provide plans. We cannot agree, however, with Hawaii's contention that Congress intended to exempt plans mandated by state statute from ERISA's coverage. Congress did distinguish between plans established or maintained by private employers for private employees and plans established or maintained by government entities for goverment employees. Such government plans are exempt. ERISA §§3(1), 3(32), 4(b)(1), 29 U.S.C. §§1002(1), 1002(32), 1003(b)(1). See *Feinstein* v. *Lewis,* 477 F.Supp. 1256 (S.D.N.Y. 1979). Private plans are not. The plans which Hawaii would require of private employers are not government plans. There is no express exemption from ERISA coverage for plans which state law requires private employers to provide their employees. The legislative history convincingly demonstates a broad congressional preemptive intent. See the discussion in the district court opinion in *Hewlett-Packard, supra,* at 1298-1300. See also *Wadsworth* v. *Whaland,* 562 F. 2d 70 (1st Cir. 1977), cert. denied, 435 U.S. 980, 981, 98 S.Ct. 1630, 56 L.Ed.2d 72 (1978); *Delta Air Lines, Inc.* v. *Kramarsky,* 485 F.Supp. 300 (S.D.N.Y. 1980). The plans envisioned under the Hawaii statute are therefore not rendered

outside the definition of employee welfare benefit plans simply because Hawaii has attempted to make them mandatory.

Hawaii next argues that, even if plans which its Act would require are within the ERISA definition of employee benefit plans, they are nevertheless exempted under ERISA §4(b)(3), 29 U.S.C. §1003(b)(3), which provides that ERISA shall not apply to any plans "maintained solely for the purpose of complying with applicable workmen's compensation laws or unemployment compensation or disability insurance laws." Specifically, appellants argue that the Hawaii Act is a "disability insurance law" within the meaning of section.

Judge Renfrew's opinion below discusses this question at length, and we agree with his conclusion that the Hawaii Act is not a disability insurance law. Disability insurance compensates people who, because of disability, are unable to perform their normal employment duties. *See Standard Oil Co.* v. *Agsalud*, 442 F.Supp. 695, 698 (N.D.Cal. 1977). Hawaii's law, on the other hand, is concerned with benefits regardless of any relationship to a disabling condition. Hawaii points out that examples of disability insurance laws were specifically referenced in the legislative history of the Welfare and Pension Plans Disclosure Act of 1958, the predecessor to ERISA. These examples included laws which provided not merely replacement of wages lost by virtue of a disability, but which also provided medical benefits for treatment of the disability. S.Rep.No. 1734, 84th Cong., 2d Sess. 16 (1956) (citing the Federal Railroad Unemployment Insurance Act, 45 U.S.C. §§351-67, general maritime law, and the disability insurance laws of New Jersey, Rhode Island, New York and California). It does

not follow, however, that all insurance or benefit plans covering medical expenses, regardless of their relationship to a disability, are "disability insurance" within the meaning of ERISA.

Appellants next contend that even if the Hawaii Act is not a "disability insurance law" within the meaning of ERISA § 4(b)(3), 29 U.S.C. § 1003(b)(3), that section was intended to exempt from ERISA coverage all governmentally required insurance programs, and not merely those specifically enumerated. There is no support for that position in the language of the statute which references only unemployment, workmen's compensation and disability insurance laws. It is true that those were the only types of compulsory state insurance legislation in effect at the time of the passage of ERISA. Thus the broad preemption of all other compulsory plans prevents state experimentation with other types of programs. The question, however, is one of policy for Congress and not of statutory interpretation for this Court.[2]

We must similarly reject Hawaii's claim that by referencing only certain types of social insurance the statute is arbitrary and violates the due process clause of the fifth amendment. Congress doubtless could have chosen to exempt all state social insurance and health insurance laws in order to encourage experimentation. Instead it

---

[2] Senators Javits and Williams have introduced a bill amending ERISA which would, among other things, specifically provide that the Hawaii Act is not preempted. S. 209, § 155, 96th Cong. 1st Sess. (1979), reprinted in 125 Cong. Rec. S. 564-65 (daily ed. Jan. 24, 1979). See also 125 Cong. Rec. S 575 (1979) (remarks of Sen. Javits, explaining the preemption section of the bill).

chose to exempt only those types of programs with which the states had some experience and with which employers were accustomed to dealing. We cannot say that its choice in this regard, however, was without rational basis, and that is the standard which we must employ. *Richardson* v. *Belcher,* 404 U.S. 78, 92 S. Ct. 254, 30 L.Ed.2d 2131 (1971); *Bolling* v. *Sharpe,* 347 U.S. 497, 74 S. Ct. 693, 98 L.Ed. 884 (1953).

Hawaii also urges that there is an inconsistency, which it argues reaches constitutional dimension, in holding that the Hawaii Act is preempted by ERISA when another scheme, the Rhode Island Catastrophic Health Insurance Plan, R.I. Gen.Laws §§ 42-62-1 to 42-62-22, is not preempted. The appellee does not concede that the Rhode Island law is exempt, and in any event, accurately points out that the Rhode Island statute differs from the Hawaii statute in that the Rhode Island statute is not based on the employer-employee relationship common to ERISA and the Hawaii Act. The Rhode Island statute envisions a state administered fund rather than funds established or maintained by employers. The Hawaii Plan and the Rhode Island Plan are distinguishable insofar as they may be affected by ERISA.

Hawaii's argument concerning the tenth amendment, and its position that states and not Congress are empowered to regulate private health insurance plans, are adequately dealt with by this Court's decision in *Hewlett-Packard, supra,* which rejected similar arguments. As a corollary to the tenth amendment argument in this case, however, Hawaii suggests that its Act is an exercise of the state's taxing power because it requires employers to pay half the health insurance premiums of their employees. We agree with the district court's opinion be-

low that the taxing power is the power to require money to be "paid to the State as a State," and that power is not invoked here. *Illinois Central R. Co.* v. *Decatur,* 147 U.S. 190, 13 S.Ct. 293, 37 L.Ed. 132 (1893). See also *National Carriers' Conf. Comm.* v. *Heffernan,* 454 F.Supp. 914 (D.Conn. 1978).

Finally, Hawaii argues that the preemption language of §514(a) of ERISA, 29 U.S.C. §1144(a), is not broad enough to encompass the Hawaii Act. That section of ERISA provides generally that the Act shall supersede "any and all State laws insofar as they may now or hereafter relate to any employee benefit plan" not otherwise exempted in the Act. Appellants in the district court argued that since ERISA was concerned primarily with the administration of benefit plans, its provisions were not intended to prevent the operation of laws like the Hawaii Act pertaining principally to benefits rather than administration. There is, however, nothing in the statute to support such a distinction between the state laws relating to benefits as opposed to administration. As the district court pointed out, the language of the statute provides that ERISA shall supersede "any and all State laws" and that does not mean "some but not all the State laws." 442 F.Supp. at 707.

Hawaii now seeks support from Judge Renfrew's later decision in *Stone* v. *Stone,* 450 F.Supp. 919 (N.D. Cal. 1978), *aff'd.* slip op. p. 180, —— F.2d —— No. 78-2313 (9th Cir. Sept. 29, 1980), holding that application of California's community property laws to division of a pension was not preempted by ERISA. Accord: *United Ass'n of Journeymen* v. *Myers,* 488 F.Supp. 704 (M.D. La. 1980); *Carpenters Pension Trust* v. *Kronschnabel,* 460 F.Supp. 978 (C.D.Cal. 1978), aff'd, slip. op. p. 186, ——

F.2d ——, No. 78-2313 (9th Cir. Sept. 29, 1980).[3] Judge Renfrew's opinion in *Stone* distinguished that case from this one, noting first that this court in *Hewlett-Packard, supra,* took a broad view of the preemption of federal law over state law in the health insurance field, and noting further that domestic relations laws only tangentially affect employee benefit plans.

The Hawaii Act before us differs from community property laws. The Act directly and expressly regulates employers and the type of benefits they provide employees. It must "relate to" employee benefit plans within the meaning of ERISA's broad preemption provision, ERISA §514(a), 29 U.S.C. §1144(a).

Affirmed.

---

[3] The contrary view, i.e., that ERISA does preempt state community property law, had been taken by another district court in the Circuit in *Francis* v. *United Technologies Corp.,* 458 F.Supp. 84 (N.D. Cal. 1978). See also Note, ERISA Preemption of Community Property Law, 55 Wash.L.Rev. 443 (1980); Note, Preemption of California Community Property Law by ERISA: Congressional Intent and Judicial Interpretation, 10 Pac.L.J. 881 (1979); Reppy Community and Separate Interests in Pensions and Social Security Benefits After *Marriage of Brown* and ERISA, 25 U.C.L.A. L.Rev. 417 (1978): Comment, The Employee Retirement Income Security Act of 1974—The Spouse's Interest or Non-Interest in a Community Property Asset, 12 Cal. West.L.Rev. 560 (1976). A similar split in authority has developed with respect to application of state garnishment laws to benefit plans. See generally *General Motors Corp.* v. *Buha,* 623 F.2d 455 (6th Cir. 1980) (listing cases).

APPENDIX B

Memorandum Opinion of the United States District Court for the Eastern District of Michigan in *Dotson* v. *Saginaw Parts, Chevrolet Motor Division, General Motors Corporation*, No. 79-73728 (E.D. Mich. Dec. 11, 1980)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CIVIL No. 79 73728

PETE DOTSON,

Plaintiff,

v.

SAGINAW PARTS, CHEVROLET MOTOR DIVISION, GENERAL MOTORS CORPORATION and GENERAL MOTORS HOURLY RATE EMPLOYEES PENSION PLAN,

Defendants.

The plaintiff, a retiree of Chevrolet Motor Division, General Motors Corporation (GM), filed this action pursuant to the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §§ 1001 *et seq.*, to recover pension benefits allegedly withheld wrongfully under the General Motors Hourly Rate Employees Pension Plan (the Plan). The Plan is a qualified plan under the applicable provisions of the Internal Revenue Code, 26 U.S.C.

§§ 1 *et seq.*, and it is subject to the applicable provisions of ERISA. The court has jurisdiction over this cause pursuant to 29 U.S.C. § 1132(a) (1976). The parties filed cross motions for summary judgment, which we now have under consideration. Basically, the parties are not in disagreement over the relevant facts surrounding this dispute. Instead, they disagree as to the conclusions that should be drawn from the application of certain provisions of ERISA to those facts.

Plaintiff began employment with General Motors Corporation at the Chevrolet Motor Division Parts Plant in Saginaw, Michigan on October 10, 1951. Plaintiff retired on June 30, 1972 under the total and permanent disability provisions of the Plan and he began receiving monthly pension benefits on July 1, 1972.[1] More than two years after plaintiff retired from General Motors Corporation, he filed a claim with the Bureau of Workmen's Compensation for the State of Michigan. In a decision dated April 27, 1976, plaintiff was awarded weekly workmen's compensation benefits in the amount of $90 per week, commencing October 26, 1971, the onset date of his disability. The Workmen's Compensation Appeal Board affirmed the decision of the administrative law judge granting plaintiff workmen's compensation benefits. Defendant has paid $2,705.85 in workmen's compensation benefits to plaintiff for the period April 27, 1976 through May 26, 1977 and has continued to pay weekly benefits in the amount of

---

[1] Plaintiff went on sick leave beginning October 25, 1971, and he received sickness and accident benefits under the General Motor's group insurance plan. Plaintiff applied for retirement from General Motors under the total and permanent disability provision of the Plan on May 22, 1972.

$53.55. Pursuant to the collective bargaining agreement between GM and the United Automobile Workers, defendant deducted the amount of plaintiff's workmen's compensation benefits from his monthly benefits under the Plan. Article IV, § 2 of the "Supplemental Agreement Covering Pension Plan" provides in pertinent part:

> In determining the monthly benefits payable under this Plan to an employee who retires with benefits payable for months commencing on or after April 1, 1971, *a deduction shall be made unless prohibited by law*, equivalent to all or any part of Workmen's Compensation . . . payable to such employee by reason of any law of the United States, or any political subdivision thereof, which has been or shall be enacted, provided that such deductions shall be to the extent that such Workmen's Compensation has been provided by premiums, taxes or other payments paid by or at the expense of the Corporation. . . . Defendants' Ex. A. (Emphasis added.)

Plaintiff alleges in his complaint that the provision in the Plan allowing workmen's compensation benefits to be offset against benefits payable under the Plan violates Section 203(a) of ERISA, 29 U.S.C. § 1053(a), which provides that "an employee's right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement age. . . ." Plaintiff further alleges that the workmen's compensation offset violates Section 403(c)(1) of ERISA, 29 U.S.C. § 1103(c)(1), which provides that "the assets of a plan shall never inure to the benefit of any employer and shall be held for the exclusive purposes of providing benefits to participants in the plan and their beneficiaries and

defraying reasonable expenses of administering the plan."[2] Plaintiff seeks a declaration that Article IV § 2 of the Plan violates ERISA, injunctive relief restraining further implementation of the provision authorizing the workmen's compensation offset and recovery of the pension benefits improperly withheld.

In the first instance, we do not find that the offset of workmen's compensation benefits under the Plan violates the antiforfeiture provision of ERISA, 29 U.S.C. § 1053(a). We agree with the court in *Buczynski* v. *General Motors Corp.*, 616 F.2d 1238 (3d Cir. 1980), that the workmen's compensation offset is expressly authorized by a treasury regulation, 26 C.F.R. § 1.411(a)-4(a) (1979), which is a valid legislative regulation issued pursuant to a clear delegation of rule-making authority, *see* 29 U.S.C. § 1202(c), and which is consistent with the purposes of ERISA and its legislative history. *Accord Pavlovic* v. *Chrysler Corp.*, No. 7-70438, Kennedy, J. (E.D. Mich., filed January 10, 1978).[3] Treasury Regulation 1.411(a)-4(a) provides in pertinent part:

---

[2] Plaintiff also alleges in his complaint that Article IV § 2 of the Plan violates 29 U.S.C. § 1056(d)(1) (1976), which provides that pension plan benefits "may not be assigned or alienated." Plaintiff appears to have abandoned this contention, since he did not address this issue in his motion for summary judgment or at the hearing on the cross motions for summary judgment. In any event, we find it to be without merit.

[3] We recognize that the court in *Utility Workers Union* v. *Consumers Power Co.*, 453 F. Supp. 447 (E.D. Mich. 1978), held that the workmen's compensation offset provisions of the Plan constituted a forfeiture in violation of 29 U.S.C. § 1053(a). The

(Footnote continued on following page)

Appendix B

> [N]onforfeitable rights are not considered to be forfeitable by reason of the fact that they may be reduced to take into account benefits which are provided under the Social Security Act or under any other Federal or State law and which are taken into account in determining plan benefits. 26 C.F.R. § 1.411(a)-(4)a (1979).

Title I of ERISA contains provisions for the protection of employee benefit rights. Title II contains amendments to the Internal Revenue Code concerning taxation of pension plans, which is codified in Title 26 of the United States Code. The tax provisions in Title II parallel the employee benefit provisions in Title I. Although Treasury Regulation 1.411(a)-4(a) was promulgated by the Secretary of Treasury under Section 411(a) of the Internal Revenue Code, 26 U.S.C. § 411(a), which relates to minimum vesting standards, Section 3002(c) of ERISA, 29 U.S.C. § 1202(c), expressly provides that Treasury Department regulations under the Internal Revenue Code pension provisions shall apply to the analogous employee benefit provisions in Title I of ERISA. Congress delegated to the Treasury Department the authority to issue regulations concerning participation, vesting and funding

---

(Footnote continued from preceding page)

district court in *Utility Workers Union* declined to give any deference to Treasury Regulation 1.411(a)-4(a), finding that the Secretary of Treasury had not been given authority to render final interpretations of the statute. 453 F. Supp. at 455n.11. We believe this view fails to recognize that the Secretary of Treasury had been delegated rule-making power and that Treasury Regulation 1.411(a)-4(a) is a valid legislative regulation which should be afforded a high degree of deference by the courts.

standards. Accordingly, Treasury Regulation 1.411(a)-4(a) controls our interpretation of the non-forfeiture provision of ERISA. 29 U.S.C. § 1053(a). *See Baker* v. *Otis Elevator Co.*, 609 F.2d 686, 689-92 (3d Cir. 1979).

Workmen's compensation benefits are benefits provided under state law within the meaning of Internal Revenue Service rulings. In considering the nondiscrimination requirement for pension plans under Section 401(a)(5) of the Internal Revenue Code, the Internal Revenue Service has issued revenue rulings that conclude that benefits payable under a workmen's compensation law may be offset against benefits payable under a qualified employees' pension plan. Rev. Rul. 69-421, part 4(j)(4), 1969-2 C.B. 61, 72; Rev. Rul. 68-243, 1968-1 C.B. 157, 158. Accordingly, we agree with the court in *Buczynski*, 616 F.2d at 1244-48, that Treasury Regulation 1-411(a)-4(a) conforms to congressional intent and that Congress was aware of and approved workmen's compensation offsets. *See* H. CONF. REP. NO. 93-1280, 93rd Cong., 2d Sess., *reprinted in* U.S. CODE CONG. & AD. NEWS 5038, 5058 (1974).

Moreover, as defendants contend, the non-forfeiture provision of ERISA, 29 U.S.C. § 1053(a), does not apply to persons who were not actively employed at the time of ERISA's effective date. Section 211(b)(2) of ERISA, 29 U.S.C. § 1061(b)(2), provides that for plans such as the one involved in this case which were in existence prior to 1974, the Act "shall apply in the case of plan years beginning after December 31, 1975." Our review of the legislative history and applicable treasury regulations compels us to conclude that 29 U.S.C. § 1053(a) only protects against forfeiture of benefits of those persons who were active employees on the date the Act became effective. *Fremont* v. *McGraw-Edison Co.*, 606 F.2d 752, 755 (7th

Cir. 1979); *Kapuscinski* v. *Plan Administrator,* No. 8-70443 (E.D. Mich., filed June 19, 1979). *See* S. REP. NO. 93-127, 93rd Cong. 2d Sess., *reprinted in* U.S. CODE CONG. & AD. NEWS 4838, 4856 (1974). Thus, since plaintiff retired in 1972 and was not an active employee during or after the plan year following December 31, 1975, plaintiff is not afforded any protection under the nonforfeiture provision of ERISA, 29 U.S.C. § 1053(a) (1976).

Finally, we conclude that the workmen's compensation offset provision of the Plan does not violate Section 403(c)(1) of ERISA, 29 U.S.C. § 1103(c)(1). We agree with the court in *Buczynski* that Treasury Regulation 1.411(a)-4(a), which authorizes the workmen's compensation offset, and the legislative history of the Act,[4] which indicates that Congress did not intend to prohibit workmen's compensation offsets, demonstrate that Article IV § 2 of the Plan does not violate 29 U.S.C. § 1103(c)(1).[5] Accordingly,

---

[4] We will not recite the legislative history that supports our conclusion that the workmen's compensation offset provision does not violate 29 U.S.C. § 1103(c)(1) in light of the excellent discussion of the legislative history by Judge Garth in *Buczynski* v. *General Motors Corporation,* 616 F.2d at 1244-48.

[5] We find particularly pertinent the following statement of defendants:

> [I]t becomes apparent that ERISA § 403(c)(1) cannot be read by its literal language to apply to the benefit of a particular plan participant. A distinction must be made between applying trust assets for the exclusive benefit of the employees versus plan design and plan provisions that may result in a possible lower future funding requirement. Plaintiff's simplistic argument that a speculative indirect benefit

(Footnote continued on following page)

summary judgment may be granted to the defendants.

IT IS SO ORDERED.

ROBERT E. DEMASCIO
United States District Judge

Dated: December 11, 1980

(Footnote continued from preceding page)

to the employer in the form of reduced funding requirements is violative of Section 403(c)(1) cannot be sustained. General Motors makes contributions based on actuarial determinations on behalf of all participants in the aggregate. No contribution is made on behalf of any one employee. The actuarial determination is affected by turnover experience of employees, deaths of employees, projected interest rates, social security benefit integration as well as workmen's compensation benefit integration. When integration is used to determine a benefit, no assets are transferred by bookkeeping entry or otherwise. The assets remain in the plan trust and are not used to fund General Motors workmen's compensation obligation. Indeed, all assets in the trust fund are used to provide benefits exclusively to participants and beneficiaries and cannot be diverted and cannot inure to the benefit of the employer. Memorandum of General Motors Corporation Responding to Plaintiff's Motion for Partial Summary Judgment at 9-10.

Appendix B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CIVIL No. 79 73728

PETE DOTSON,

Plaintiff,

v.

SAGINAW PARTS, CHEVROLET MOTOR DIVISION, GENERAL MOTORS CORPORATION and GENERAL MOTORS HOURLY RATE EMPLOYEES PENSION PLAN,

Defendants.

Judgment

This cause came before the court on cross motions for summary judgment, and the court having entered its Memorandum Opinion,

NOW, THEREFORE, IT IS ORDERED AND ADJUDGED

that defendants have judgment and that the workmen's compensation offset provision in the General Motors Hourly Rate Employee Pension Plan does not violate the Employee Retirement Income Security Act of 1974.

Dated at Detroit, Michigan, this 11th day of December 1980.

ROBERT E. DEMASCIO
United States District Judge

APPENDIX C

Opinion of the United States District Court for the Eastern District of Michigan in *Pavlovic* v. *Chrysler Corporation*, No. 7-70438 (E.D. Mich. Jan. 10, 1978)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CIVIL ACTION No. 7-70438

MARY PAVLOVIC,

Plaintiff,

v.

CHRYSLER CORPORATION,

Defendant.

OPINION AND ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

The facts in this action are not in dispute. Plaintiff first began working for defendant in 1935. On April 17, 1970 she allegedly aggravated an arthritic condition while crossing an assembly line. She continued to work until August 13, 1970 when she was put on a period of allowed sickness and accident benefits. On September 30, 1971 she formally retired at age 58 under the "Permanent Total Disability" provision of the Chrysler-U.A.W. pension plan. On October 1, 1973 plaintiff filed a claim for workmen's

compensation benefits, and on July 17, 1974 she agreed to "redeem" Chrysler's liability for $7,000.00, which Chrysler later paid. The Chrysler-U.A.W. Board of Administration then determined that this workmen's compensation award should be set off against plaintiff's pension benefits pursuant to the terms of §11 of the pension plan, which provides in part that "a deduction shall be made unless prohibited by law, equivalent to all or any part of Workmen's Compensation (including compromise or redemption settlements)." An exception for Workmen's Compensation payments resulting from a claim made within two years of loss of seniority was apparently found inapplicable. Plaintiff was given no pension benefit from April, 1975 through March, 1977 and was given a reduced benefit in April, 1977.

Plaintiff filed the instant action on February 23, 1977 attacking the legality of the offset provision of the pension plan. The court has jurisdiction over this action, without regard to the amount in controversy, by virtue of §502(f) of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §1132(f). Although plaintiff has not explicitly pleaded this statute, it is clear that her claim is that application of the offset provision causes a forfeiture of her vested right to pension benefits, in violation of §203(a) of the Act, which provides in part that "an employee's right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement age. . . . " Defendant has filed a motion for summary judgment urging that plaintiff has failed to state a claim under the Act.

One of defendant's contentions is that application of the offset clause does not amount to a forfeiture since ERISA's guarantee "is framed in terms of the benefit determined *under the plan* and it is only that benefit

which is protected." Defendant's Brief at 5. However, regulations interpreting ERISA define "nonforfeitable" as follows:

> (a) *Nonforfeitability.* Certain rights in an accrued benefit must be nonforfeitable to satisfy the requirements of section 411(a). This section defines the term "nonforfeitable" for purposes of these requirements. For purposes of section 411 and the regulations thereunder, a right to an accrued benefit is considerd to be nonforfeitable at a particular time if, at that time and thereafter, it is an unconditional right. . . . [A] right which, at a particular time, is conditioned under the plan upon a subsequent event, subsequent performance, or subsequent forbearance which will cause the loss of such right is a forfeitable right at that time.

Treas. Reg. §1.411(a)-4(a), 42 F.R. 42326 (August 23, 1977). The same definition appears in the now-superseded regulation 26 C.F.R. §11.411(a)-4(a). (Although these are Internal Revenue Service Regulations interpreting the "Minimum Vesting Standards" section of the Internal Revenue Code, 26 U.S.C. §411, they are made applicable to the "Minimum Vesting Standards" provision of ERISA by §3002(c) of ERISA, 29 U.S.C. §1202(c)). Thus, the Act absolutely guarantees benefits which, by the terms of the pension plan, are contingent on subsequent forbearance similar to the requirement in the instant case that beneficiaries not receive workmen's compensation on a claim filed over two years after retirement.

However, the regulation just referred to goes on to add the following clarification:

> [N]onforfeitable rights are not considered to be forfeitable by reason of the fact that they may

> be reduced to take into account benefits which are provided under the Social Security Act or under any other Federal or State law and which are taken into account in determining plan benefits.

Workmen's compensations benefits are benefits provided under State law within the meaning of similar Internal Revenue Service regulations. Rev. Rul. 68-243, 1968-1 C.B. 157. This regulation is consistent with the legislative history and the purpose of ERISA and is presumptively valid. Accordingly, plaintiff's claim based on the alleged "nonforfeitability" of her pension benefits under ERISA is without merit.

Moreover, as defendant also contends, the nonforfeitability provisions of ERISA do not apply to plan participants who, like plaintiff, retired and received pension benefits prior to 1972. §203 of ERISA, 29 U.S.C. §153, applies to plan years beginning after December 31, 1975. 29 U.S.C. §1061(b)(2). Defendant argues that §203 does not apply to this action, since plaintiff's cause of action arose on or about April 1, 1975, the date her pension was first withheld to offset her workmen's compensation award. Although there is case support for this position (*Keller* v. *Graphic Systems of Akron, Inc.*, 422 F. Supp. 1005 (N.D. Ohio, 1976)), it is not clear why plaintiff's cause of action could not have arisen on January 1, 1976, when ERISA arguably became applicable to the determination of the pension due her. However this may be, statutory history and administrative regulations make it clear that the Act was not meant to apply to persons who had retired and begun receiving benefits prior to 1974. §203(b)(1)(E) provides that in computing years of service for purposes of determining the non-

forfeitable percentage of a participant's accrued benefits, "years of service before January 1, 1971" may be disregarded "unless the employee has had at least three years of service after December 31, 1970." 29 U.S.C. §1053(b)(1)(E); *see also* 26 C.F.R. 11.411(a)-5(b)(5). A statement by the Hon. Al Ullman, ranking majority member of the House Committee on Ways and Means, explains this provision:

> The purpose of this provision is to avoid imposing on plans very heavy costs for providing retroactive vesting for employees who have already terminated their service. This might jeopardize benefits for employees still covered under the plan and could involve very serious recordkeeping problems.

August 20, 1974, 120 Cong. Rec. H 8702, reprinted in 1974 U.S. Code Cong. & Admin. News at 5168-69; *see also* the statement of the Hon. Harrison A. Williams, Jr., Chairman of the Senate Committee on Labor and Public Welfare, August 22, 1974, 120 Cong. Rec. S 15737, reprinted in 1974 U.S. Code Cong. & Admin. News at 5180. Any remaining doubt as to the retroacitvity of ERISA was resolved by Treas. Reg. §1.411(a)-2(f), 42 F.R. 42325 (August 23, 1977), which provides as follows:

> *Application of Rules.* The requirements of section 411 do not apply to employees who separate from service with the employer prior to the first plan year to which such requirements apply and who never return to service with the employer in a plan year to which section 411 applies.

Finally, the cases have consistently declined to apply ERISA retroactively—*Keller, supra; Martin* v. *Bankers Trust Co.,* 417 F. Supp. 923 (W.D. Va. 1976); *Carlson* v. *Bundy Corp.,* Civil Action No. 6-72274 (E.D. Mich. 1977) (Pratt, J.).

For all of the foregoing reasons, defendant's motion for summary judgment is GRANTED, and this action will be dismissed.

Dated: January 10, 1978
Detroit, Michigan

CORNELIA G. KENNEDY
Chief United States District Judge

EXHIBIT D

Memorandum Opinion of the United States District Court for the Eastern District of Michigan in *Carlson* v. *Bundy Corporation*, No. 6-72274 (E.D. Mich. Aug. 18, 1977)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CIVIL ACTION No. 6-72274

ROBERT CARLSON,

Plaintiff,

v.

BUNDY CORPORATION, a Michigan corporation, and the SALARIED PENSION BOARD OF ADMINISTRATION OF BUNDY CORPORATION, jointly and severally,

Defendants.

MEMORANDUM OPINION AND ORDER REGARDING MOTION FOR PARTIAL SUMMARY JUDGMENT

The facts relevant to this motion are not in dispute. The only issue before this Court is one of law. Plaintiff retired from the Bundy Corporation on July 1, 1974 at age 55. At that time he had vested rights in the Bundy Corporation's pension plan which was administered by the defendant Salaried Pension Board of Administration of Bundy Tubing (hereinafter Board).

Appendix D

Upon his retirement plaintiff received pension benefits under defendant Bundy Corporation's retirement plan which was entered into between the Corporation and its employees on August 1, 1973. Subsequently, on August 15, 1976 plaintiff was awarded $10,500 under Michigan's Workmen's Compensation laws. The defendant Board thereupon reduced plaintiff's pension payments by the amount of the Workmen's Compensation Award in compliance with the terms of the Pension Plan.[1] Plaintiff seeks summary judgment on Count I of his complaint which alleges that the temporary reduction of pension benefits violates the Employee Retirement Income Security Act of 1974 (hereinafter ERISA), 29 U.S.C. §1001 et seq.[2]

The question before the Court is whether the defendants' action in decreasing plaintiff's benefits violated the terms of ERISA. Defendants established an employee benefit plan as part of their ongoing commercial enterprise. ERISA generally governs the terms and conditions of this type of plan. 29 U.S.C. §1003(a). Plaintiff argues that the defendant's actions contravene the vesting requirements of ERISA. Specifically, plaintiff argues that 29 U.S.C. §1053 (a) requires that all benefits under covered plans must be "nonforfeitable;" and that the defendants' acts constituted an impermissible forfeiture.

---

[1] Plaintiff does not dispute that the Board properly interpreted the provisions of the plan pertinent here, but rather contends that the provision itself violates the Congressional enactment.

[2] Count II, which is not before the Court, alleges that the defendants willfully and maliciously misled plaintiff in violation of their duties as fiduciaries about their willingness to forego any reduction in benefits.

Appendix D

The relevant statute reads:

> "Each pension plan shall provide that an employee's right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement age and in addition [satisfies the time requirements of subsection 2]."
>
> 29 U.S.C. §1053(a).[3]

Defendant first argues that this statute does not apply to this plaintiff because he has not yet reached "normal retirement age." The Act defines normal retirement age as

> "the earlier of—
>
> (A) the time a plan participant attains normal retirement age under the plan, or
>
> (B) the later of—
>
> (i) the time a plan participant attains age 65, or
>
> (ii) the 10th anniversary of the time a plan participant commenced participation in the plan."
>
> 29 U.S.C. §1002(24).

Under both the Plan and the Act, the plaintiff's normal retirement age is 65. Plan Article III §3.1. Thus, defendant Board appears to be correct that the terms of §1053(a)

---

[3] 29 U.S.C. §1053(a)(1) does not apply because it refers to pension plans that call for employee contributions. It is uncontested that the plan involved here is entirely funded by the employer.

upon which plaintiff relies do not become operative as to him for another seven years.

Even if plaintiff were able to surmount this threshold issue by showing, for example, that the Plan intends retirement age to be the time an employee elects retirement,[4] he would not prevail. Section 1053(a) provides that the employee's right to his normal retirement benefit must be nonforfeitable.

> "The term 'nonforfeitable' when used with respect to a pension benefit or right means a claim obtained by a participant or his beneficiary to that part of an immediate or deferred *benefit under a pension plan,* which arises from the participant's service, which is unconditional, and which is legally enforceable against the plan."
>
> 29 U.S.C. §1002(19). (Emphasis supplied).

This element by its very terms defines nonforfeitable rights in terms of benefits granted by the plan. Thus, where as here, the Plan expressly allows for the reduction in benefits for workmen's compensation payments, no "forfeit" has occurred.[5]

---

[4] Plaintiff argues that under this Plan normal retirement within the meaning of ERISA occurs upon early retirement. This argument rests upon the Act's definition of "accrued benefit." 29 U.S.C. §1002(23). Because it runs contrary to the express definition contained in §1002(24), the Court finds it unpersuasive.

[5] It is well to remember that ERISA merely sets minimum standards for pension plans which are essentially contractual in nature. *Hayes* v. *Krocer Co.*, 78 CCH Labor cases, ¶11,473, p. 21,069 (S.D. Ohio 1976). Moreover, there is some question about whether this is a forfeiture or merely a temporary reduction in benefits. Compare *Keller* v. *Graphic Systems of Akron, Inc.*, 422 F. Supp. 1005 (N.D. Ohio 1976) (provision for forfeiture of all benefits if employee works for a competitor contravenes Section 1053).

Appendix D

This interpretation of the Act is consistent with both the purpose of the statute and other sections of the Act. In setting forth its purpose, the Congress stated it was concerned

> ". . . that despite the enormous growth in such plans many employees with long years of employment are losing anticipated retirement benefits owing to the lack of vesting provisions in such plans; that owing to the inadequacy of current minimum standards, the soundness and stability of plans with respect to adequate funds to pay promised benefits may be endangered; that owing to the termination of plans before requisite funds have been accumulated, employees and their beneficiaries have been deprived of anticipated benefits."
>
> 29 U.S.C. §1001(a).

Congress set out to remedy these deficiencies by requiring better disclosure, reporting and conduct of fiduciaries, by requiring procedures to prevent the dissipation of funds, 29 U.S.C. §1001(b) and by requiring plans "to vest the accrued benefits of employees . . . to meet minimum standards of funding." 29 U.S.C. §1001(c). Thus, it is clear, Congress was primarily concerned with the adequacy of funding of pension plans and the conduct of those who administered retirement funds in order to protect against the danger that individuals would reach retirement age only to find their retirement sustenance dissipated. Congress did not in the Act suggest that it intended to go beyond *minimum* requirements that would preserve the integrity of funds. See *Hewlett-Packard Co.* v. *Barnes*, 425 F.Supp. 1294, 1297 (N.D. Cal. 1977). Thus, it appears

that agreed-upon reductions in benefits to compensate for payments under workmen's compensation plans would not be contrary to the plan's purposes so long as the reduction in benefits was limited to the amount of such benefits paid.

An additional indication of Congressional intent is found elsewhere in the provisions relating to plan participation and vesting. Section 1056(b) of the Act provides:

> "If—
>
> (1) a participant or beneficiary is receiving benefits under the plan . . . a plan may not decrease benefits of such a participant by reason of any increase in the benefit levels payable under title II of the Social Security Act [federal old-age, survivors and disability insurance benefits] or the Railroad Retirement Act of 1937 . . ."
>
> 29 U.S.C. §1056(b).

While Congress has expressly provided that a plan may not reduce pension benefits if a person is awarded money under two specific federal enactments, it did not indicate a similar intention with respect to any state programs. While the Court is hesitant to infer a positive intention from silence, the Court cannot help being influenced by the fact that Congress clearly considered the possibility that other governmental payment might not justify reduction in benefits under any circumstances, but has not extended that protection to workmen's compensation laws. This, in combination with the plain language of the statute and Congress' more clearly articulated purpose, leads the Court to conclude that ERISA does not preclude the portion of

the Plan that temporarily reduced plaintiff's benefits in the amount of his workmen's compensation award.[6]

This disposition makes it unnecessary to consider defendants' contention that ERISA cannot be applied retroactively. Plaintiff's motion for partial summary judgment is therefore denied. Defendants' motion for partial summary judgment on Count I of the complaint is therefore granted. Defendants have made no formal motion for partial summary judgment but Rule 56(c) suggests that when there is no genuine issue of material fact and the issue of law is clear, judgment may be granted.

IT IS SO ORDERED.

PHILIP PRATT
United States District Judge

Dated: August 18, 1977
Detroit, Michigan

---

[6] Cases cited by the defendant, *Burroughs Corp.* v. *Teafoe*, Civ. No. 76-70091 (E.D. Mich. Oct. 14, 1976); *Patterson* v. *Southwestern Bell Telephone*, Civ. No. 76-363-C (E.D. Okla. March 22, 1976) and *Fulty* v. *Union Carbide Corp.*, 219 Tenn. 345, 409 S.W.2d 541 (1966) do not consider the effect of ERISA on pension plan provisions such as the one at issue in the instant case and are therefore not on point.

Respectfully submitted,

LAURENCE REICH,
Counsel for Respondent.

CARPENTER, BENNETT & MORRISSEY,
Attorneys for Respondent.

OTIS M. SMITH,
General Counsel,
EUGENE L. HARTWIG,
Associate General Counsel,
DAVID M. DAVIS,
General Motors Corporation,
Of Counsel.